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June 14, 2007

VIA FACSIMILE

To: Supervisory Examiner: Joseph H. Feild
Group Art Unit: 2617
U.S.P.T.O.

Facsimile No.: 571-273-8300

From: Scott M. Tulino, Esq.

Facsimile No.: 703-761-2375 or 76


Re: Petition to Withdraw Finality of Office Action dated May 16, 2007
U.S. Patent Application Serial No.: 10/786,306
Our Ref. No.: FUK.030

Dear Supervisory Examiner Feild:

We have attached a Petition to Withdraw Finality of the Office Action dated May 16, 2007.

Thank you in advance for your kind consideration on this case.

Very truly yours,


Scott M. Tulino, Esq.
Registration No. 48,317

Sean M. McGinn, Esq.
Registration No. 34,386

SMT:SMM
Attachment

Number of pages (including this cover sheet): 4

Docket No. 2003P050463(N.305)
(FUK.030)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Rie DAITA

Serial No.: 10/786,306

Group Art Unit: 2617

Filed: February 26, 2004

Examiner: Ajibade Akonai, Olumide

For: PORTABLE COMMUNICATION TERMINAL SET

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW FINALITY OF REJECTION AS
PREMATURE UNDER 37 C.F.R. § 1.181**

Sir:

Applicant respectfully petitions under 37 C.F.R. § 1.181 that the finality of Patent Application S/N 10/786,306: "PORTABLE COMMUNICATION TERMINAL SET" be withdrawn as premature under the guidelines of M.P.E.P. § 706.07(b). This guideline states: "it would not be proper to make final a first Office action in a continuing of substitute application where the application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search" (emphasis added).

In the Advisory Action dated January 23, 2007 the Examiner indicated that the affidavit filed after the final office action was mailed was denied entry because it raised a new issue that should have been presented earlier.

Serial No. 10/786,306
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(FUK.030)

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Thus, in accordance with M.P.E.P. § 706.07(b), Applicant submits that the finality of the rejections in the Office Action dated May 16, 2007 are premature and should be withdrawn.

More importantly, Applicant points out that on February 9, 2007 Applicant filed a Request for Continued Examination (RCE) and an Applicant Initiated Request for Interview, formally requesting an interview prior to the first Office Action to discuss the merits of the Examiner's rejections and Applicant's traversal arguments, which the Examiner failed to respond to in the Advisory Action. Such an interview is a matter of right after an RCE and should have been granted by the Examiner (see M.P.E.P. §§706.07(b) and 713.02).

The Examiner, however, issued the Final Office Action dated May 16, 2007 without granting or even responding to the Applicant Initiated Request for Interview. Indeed, the Examiner simply ignored Applicant's request.

For at least the reasons outlined above, Applicant respectfully petitions that the finality of the rejections for the above-identified Application be withdrawn.

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Respectfully Submitted,

Date: June 14, 2007



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CERTIFICATE OF TRANSMISSION

I certify that I transmitted via facsimile to (571) 273-8300 the enclosed Request for Reconsideration under 37 C.F.R. § 1.116 to Supervisory Examiner Joseph H. Feild, Art Unit 2617, on June 14, 2007.



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